

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation)
Against:)**

JOSEPH TERENCE DALY, M.D.)

Case No. 8002016021193

**Physician's and Surgeon's)
Certificate No. G26296)**

Respondent)

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 7, 2018.

IT IS SO ORDERED August 8, 2018.

MEDICAL BOARD OF CALIFORNIA

By:



**Ronald H. Lewis, M.D.
Chair, Panel A**

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 ROSEMARY F. LUZON
Deputy Attorney General
4 State Bar No. 221544
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5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
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8 *Attorneys for Complainant*

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

14 **JOSEPH TERENCE DALY, M.D.**
15 **9834 Genesee Avenue, Suite 315**
La Jolla, CA 92037

16 **Physician's and Surgeon's Certificate**
17 **No. G 26296,**

18 Respondent.

Case No. 800-2016-021193

OAH No. 2018010516

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
23 of California (Board). She brought this action solely in her official capacity and is represented in
24 this matter by Xavier Becerra, Attorney General of the State of California, by Rosemary F.
25 Luzon, Deputy Attorney General.

26 2. Respondent Joseph Terence Daly, M.D. (Respondent) is represented in this
27 proceeding by attorney Robert W. Frank, Esq., whose address is: Neil, Dymott, Frank, McFall &
28 Trexler, 110 West A Street, Suite 1200, San Diego, CA 92101.

1 3. On or about January 11, 1974, the Board issued Physician's and Surgeon's Certificate
2 No. G 26296 to Respondent. The Physician's and Surgeon's Certificate was in full force and
3 effect at all times relevant to the charges brought in Accusation No. 800-2016-021193, and will
4 expire on August 31, 2018, unless renewed.

5 **JURISDICTION**

6 4. On December 19, 2017, Accusation No. 800-2016-021193 was filed before the
7 Board, and is currently pending against Respondent. A true and correct copy of the Accusation
8 and all other statutorily required documents were properly served on Respondent on December
9 19, 2017, at his address of record. Respondent timely filed his Notice of Defense contesting the
10 Accusation. A true and correct copy of Accusation No. 8000-2016-021193 is attached as Exhibit
11 A and incorporated herein by reference as if fully set forth herein.

12 **ADVISEMENT AND WAIVERS**

13 5. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. 800-2016-021193. Respondent has also carefully read,
15 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
16 Disciplinary Order.

17 6. Respondent is fully aware of his legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
19 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
20 to the issuance of subpoenas to compel the attendance of witnesses and the production of
21 documents; the right to reconsideration and court review of an adverse decision; and all other
22 rights accorded by the California Administrative Procedure Act and other applicable laws, having
23 been fully advised of same by his attorney of record, Robert W. Frank, Esq.

24 7. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently
25 waives and gives up each and every right set forth above.

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1 the Board, any member thereof, and/or any other person from future participation in this or any
2 other matter affecting or involving Respondent. In the event that the Board does not, in its
3 discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the
4 exception of this paragraph, it shall not become effective, shall be of no evidentiary value
5 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
6 hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order
7 be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any
8 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this
9 Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

10 **ADDITIONAL PROVISIONS**

11 13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein
12 to be an integrated writing representing the complete, final and exclusive embodiment of the
13 agreements of the parties in the above-entitled matter.

14 14. The parties understand and agree that Portable Document Format (PDF) and facsimile
15 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
16 signatures thereto, shall have the same force and effect as the originals.

17 15. In consideration of the foregoing admissions and stipulations, the parties agree that
18 the Board may, without further notice to or opportunity to be heard by Respondent, issue and
19 enter the following Disciplinary Order:

20 **DISCIPLINARY ORDER**

21 1. **PUBLIC REPRIMAND.**

22 IT IS HEREBY ORDERED that Respondent Joseph Terence Daly, M.D., Physician's and
23 Surgeon's Certificate No. G 26296, shall be and is hereby Publicly Reprimanded pursuant to
24 California Business and Professions Code section 2227, subdivision (a), subsection (4). This
25 Public Reprimand, which is issued in connection with Respondent's care and treatment of
26 Patients A, B, and C, as set forth in Accusation No. 800-2016-021193, is as follows:

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1 Respondent failed to obtain signed informed consents for procedures performed on
2 Patients A, B, and C; Respondent failed to refer Patient B for an outside expert
3 opinion; and Respondent failed to maintain adequate and accurate medical records
4 for Patients B and C, as more fully described in Accusation No. 800-2016-021193, a
5 true and correct copy of which is attached hereto as Exhibit A and incorporated by
6 reference as if fully set forth herein.

7 **2. MEDICAL RECORD KEEPING COURSE.**

8 Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a
9 course in medical record keeping approved in advance by the Board or its designee. Respondent
10 shall provide the approved course provider with any information and documents that the approved
11 course provider may deem pertinent. Respondent shall participate in and successfully complete
12 the classroom component of the course not later than six (6) months after Respondent's initial
13 enrollment. Respondent shall successfully complete any other component of the course within
14 one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense
15 and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of
16 licensure.

17 A medical record keeping course taken after the acts that gave rise to the charges in the
18 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
19 or its designee, be accepted towards the fulfillment of this condition if the course would have
20 been approved by the Board or its designee had the course been taken after the effective date of
21 this Decision.

22 Respondent shall submit a certification of successful completion to the Board or its
23 designee not later than 15 calendar days after successfully completing the course, or not later than
24 15 calendar days after the effective date of the Decision, whichever is later.

25 **3. FAILURE TO COMPLY.**

26 Any failure by Respondent to comply with the terms and conditions of the Disciplinary
27 Order set forth above shall constitute unprofessional conduct and grounds for further disciplinary
28 action.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Robert W. Frank, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. G 26296. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED:

5-30-2018

JOSEPH TERENCE DALY, M.D.

Respondent

I have read and fully discussed with Respondent Joseph Terence Daly, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED:

5-31-18

ROBERT W. FRANK, ESQ.

Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated:

Respectfully submitted,

XAVIER BUCIERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

ROSEMARY F. LAZON
Deputy Attorney General
Attorneys for Complainant

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1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, Robert W. Frank, Esq. I understand the stipulation and the effect it
4 will have on my Physician's and Surgeon's Certificate No. G 26296. I enter into this Stipulated
5 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
6 bound by the Decision and Order of the Medical Board of California.

7
8 DATED: _____

9 JOSEPH TERENCE DALY, M.D.
10 *Respondent*

11 I have read and fully discussed with Respondent Joseph Terence Daly, M.D. the terms and
12 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
13 I approve its form and content.

14
15 DATED: _____

16 ROBERT W. FRANK, ESQ.
17 *Attorney for Respondent*

18 ENDORSEMENT

19 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
20 submitted for consideration by the Medical Board of California.

21 Dated: 5/31/18

Respectfully submitted,

22 XAVIER BHCERRA
23 Attorney General of California
24 ALEXANDRA M. ALVAREZ
25 Supervising Deputy Attorney General

26 ROSEMARY F. LUZON
27 Deputy Attorney General
28 *Attorneys for Complainant*

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Exhibit A

Accusation No. 800-2016-021193

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 ROSEMARY F. LUZON
Deputy Attorney General
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8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Dec 19 20 17
BY ANALYST

10 BEFORE THE
MEDICAL BOARD OF CALIFORNIA
11 DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 800-2016-021193

14 Joseph Terence Daly, M.D.
9834 Genesee Avenue, Suite 315
15 La Jolla, CA 92037

ACCUSATION

16 Physician's and Surgeon's Certificate
No. G 26296,

17 Respondent.

19 Complainant alleges:

20 PARTIES

21 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer
23 Affairs (Board).

24 2. On or about January 11, 1974, the Medical Board issued Physician's and Surgeon's
25 Certificate No. G 26296 to Joseph Terence Daly, M.D. (Respondent). The Physician's and
26 Surgeon's Certificate No. G 26296 was in full force and effect at all times relevant to the charges
27 brought herein and will expire on August 31, 2018, unless renewed.

28 ///

1 JURISDICTION

2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code (Code) unless otherwise
4 indicated.

5 4. Section 2220 of the Code states:

6 "Except as otherwise provided by law, the board may take action against all
7 persons guilty of violating this chapter. . ." [Chapter 5, the Medical Practice Act.]

8 5. Section 2227 of the Code states:

9 "(a) A licensee whose matter has been heard by an administrative law judge of
10 the Medical Quality Hearing Panel as designated in Section 11371 of the Government
11 Code, or whose default has been entered, and who is found guilty, or who has entered
12 into a stipulation for disciplinary action with the board, may, in accordance with the
13 provisions of this chapter:

14 "(1) Have his or her license revoked upon order of the board.

15 "(2) Have his or her right to practice suspended for a period not to exceed one
16 year upon order of the board.

17 "(3) Be placed on probation and be required to pay the costs of probation
18 monitoring upon order of the board.

19 "(4) Be publicly reprimanded by the board. The public reprimand may include
20 a requirement that the licensee complete relevant educational courses approved by the
21 board.

22 "(5) Have any other action taken in relation to discipline as part of an order of
23 probation, as the board or an administrative law judge may deem proper.

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1 “(b) Any matter heard pursuant to subdivision (a), except for warning letters,
2 medical review or advisory conferences, professional competency examinations,
3 continuing education activities, and cost reimbursement associated therewith that are
4 agreed to with the board and successfully completed by the licensee, or other matters
5 made confidential or privileged by existing law, is deemed public, and shall be made
6 available to the public by the board pursuant to Section 803.1.”

7 6. Section 2234 of the Code, states:

8 “The board shall take action against any licensee who is charged with
9 unprofessional conduct. In addition to other provisions of this article, unprofessional
10 conduct includes, but is not limited to, the following:

11 “(a) Violating or attempting to violate, directly or indirectly, assisting in or
12 abetting the violation of, or conspiring to violate any provision of this chapter.

13 “... ”

14 “(c) Repeated negligent acts. To be repeated, there must be two or more
15 negligent acts or omissions. An initial negligent act or omission followed by a
16 separate and distinct departure from the applicable standard of care shall constitute
17 repeated negligent acts.

18 “(1) An initial negligent diagnosis followed by an act or omission medically
19 appropriate for that negligent diagnosis of the patient shall constitute a single
20 negligent act.

21 “(2) When the standard of care requires a change in the diagnosis, act, or
22 omission that constitutes the negligent act described in paragraph (1), including, but
23 not limited to, a reevaluation of the diagnosis or a change in treatment, and the
24 licensee’s conduct departs from the applicable standard of care, each departure
25 constitutes a separate and distinct breach of the standard of care.

26 “... ”

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1 7. Section 2266 of the Code states:

2 "The failure of a physician and surgeon to maintain adequate and accurate
3 records relating to the provision of services to their patients constitutes unprofessional
4 conduct."

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Repeated Negligent Acts)**

7 8. Respondent has subjected his Physician's and Surgeon's Certificate No. G 26296 to
8 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of
9 the Code, in that he committed repeated negligent acts in his care and treatment of Patient A,
10 Patient B, and Patient C, respectively, as more particularly alleged hereinafter:¹

11 **Patient A**

12 9. On or about January 5, 2011, Patient A was seen by Respondent. Respondent noted
13 that Patient A had a large retinal tear in the right eye with a superior temporal peripheral
14 detachment. Respondent performed a pneumatic retinopexy of the right eye with sulfur
15 hexafluoride (SF6) gas. No signed informed consent was obtained for the use of SF6 gas.

16 10. On or about January 10, 2011, Patient A was seen by Respondent. Patient A's friend
17 was also present during the visit. Respondent diagnosed Patient A with a large retinal tear with
18 traction superotemporally. Respondent recommended that Patient A undergo a scleral buckle
19 operation, which took place on or about January 18, 2011. There is no signed informed consent
20 for this procedure in the medical records.

21 11. On or about January 24, 2011, Patient A had a follow-up visit with Respondent
22 following the January 18, 2011, scleral buckle operation. Patient A complained of irritation and
23 the presence of blood in the tears from his right eye. The scleral buckle was noted
24 postoperatively, however, persistent subretinal fluid was also noted to be present. Respondent
25 added more SF6 gas in the right eye and positioning was recommended. No signed informed
26 consent was obtained for the use of SF6 gas.

27 ¹ References to "Patient A," "Patient B," and "Patient C" herein are used to protect patient
28 privacy.

1 12. On or about January 27, 2011, Patient A was seen again by Respondent. Respondent
2 treated Patient A with a diode laser. Respondent noted that the laser was added to the scleral
3 buckle and around the right eye retinal tear. No signed informed consent was obtained for the
4 diode laser procedure.

5 13. On or about February 15, 2011, Patient A was seen by Respondent for the last time.
6 Patient A's visual acuity was 20/40 and he complained of blurry vision and floating objects in his
7 right eye. Respondent noted that the flap was elevated on the scleral buckle, and additional lattice
8 was also noted. Patient A was treated with a diode laser. No signed informed consent was
9 obtained for the diode laser procedure.

10 **Patient B**

11 14. On or about November 7, 2011, Respondent sent a letter to the referring
12 ophthalmologist for Patient B. The letter states that Patient B underwent surgery to repair a
13 macular hole in the left eye on July 3, 2011, however, the surgery actually took place on July 5,
14 2011.

15 15. On or about August 22, 2014, Patient B underwent repair of a macular hole in her
16 right eye, which was performed by Respondent. There is no signed informed consent for this
17 procedure in the medical records.

18 16. On or about September 5, 2014, Respondent sent two letters to Patient B's referring
19 ophthalmologist. One letter refers to a repair of the macular hole in Patient B's right eye, while
20 the other letter refers to a repair of the macular hole in Patient B's left eye. However, neither
21 letter states the date of the repairs. In addition, although both letters concern Patient B's post-
22 operative status following the August 22, 2014, repair of the macular hole in Patient B's right eye,
23 the letters contain different and contradictory information regarding Patient B's status.

24 17. On or about October 24, 2014, Patient B underwent a retinal detachment repair,
25 which was performed by Respondent. There is no signed informed consent for this procedure in
26 the medical records.

27 18. On or about October 24, 2014, Respondent sent a letter to Patient B's referring
28 ophthalmologist. The letter refers to a repair of the macular hole in Patient B's "left" eye which

1 took place in "August of this year," however, the repair was of Patient B's right eye. In addition,
2 Respondent states in the letter that, "[t]he vision in her better right eye measures 20/50 and
3 likewise pinholes to 20/30-. . . Otherwise her media are clear, and the retina is flat. The macular
4 hole is closed, and she seems to be doing quite well." In contrast to these findings, Respondent
5 examined Patient B on or about October 23, 2014, during which he noted a vision of 20/200 in
6 the right eye and the presence of retinal detachment.

7 19. In medical records dated on or about December 19, 2014, Respondent made
8 additional notations regarding further evaluation and treatment undertaken by Patient B with a
9 retinal specialist and glaucoma specialist, respectively. The additional notations are not dated.

10 20. Following the surgery to repair the macular hole in Patient B's right eye, which took
11 place on or about August 22, 2014, Patient B repeatedly presented to Respondent with complaints
12 of pain and worsening vision. Until on or about December 8, 2014, Respondent did not raise the
13 option of referring Patient B for an outside expert opinion.

14 Patient C

15 21. On or about October 16, 2014, Patient C underwent vitrectomy surgery, which was
16 performed by Respondent. There is no signed informed consent for this procedure in the medical
17 records.

18 22. On or about January 15, 2015, Respondent sent a letter to Patient C's
19 ophthalmologist, who previously performed cataract surgery on Patient C. On or about
20 December 8, 2014 and January 12, 2015, respectively, Respondent examined Patient C, but
21 neither examination date is referenced in Respondent's January 15, 2015, letter. In the letter,
22 Respondent reports that Patient C's current vision measures at "the 20/60 level in the right eye"
23 and "20/20" in the left eye. However, upon examination on or about January 12, 2015,
24 Respondent measured Patient C's left eye to be "20/25+2," not "20/20." In addition, although
25 Respondent's letter references "possible regrowth of the epiretinal membrane," such finding was
26 not documented during the January 12, 2015, examination, but rather was documented weeks
27 earlier during the December 8, 2014, examination.

28 / / /

1 23. Respondent committed repeated negligent acts in his care and treatment of Patient A,
2 Patient B, and Patient C, which included, but were not limited to the following:

3 (a) Respondent failed to obtain signed informed consents for procedures performed
4 on Patient A, Patient B, and Patient C, as more particularly alleged in paragraphs 9 through
5 22, above;

6 (b) Respondent failed to refer Patient B for an outside expert opinion; and

7 (c) Respondent failed to adequately document information concerning, *inter alia*,
8 Patient B's and Patient C's medical status and condition, treatment history, and examination
9 dates, as more particularly alleged in paragraphs 14 through 22, above.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Failure to Maintain Adequate and Accurate Records)**

12 24. Respondent has subjected his Physician's and Surgeon's Certificate No. G 26296 to
13 disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that
14 he failed to maintain adequate and accurate records regarding his care and treatment of Patient B
15 and Patient C, as more particularly alleged in paragraphs 14 through 23, above, which are hereby
16 incorporated by reference and re-alleged as if fully set forth herein.

17 **PRAYER**

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
19 and that following the hearing, the Medical Board of California issue a decision:

20 1. Revoking or suspending Physician's and Surgeon's Certificate No. G 26296, issued
21 to Respondent Joseph Terence Daly, M.D.;

22 2. Revoking, suspending or denying approval of Respondent Joseph Terence Daly,
23 M.D.'s authority to supervise physician assistants and advanced practice nurses, pursuant to
24 section 3527 of the Code;

25 3. Ordering Respondent Joseph Terence Daly, M.D., if placed on probation, to pay the
26 Board the costs of probation monitoring; and

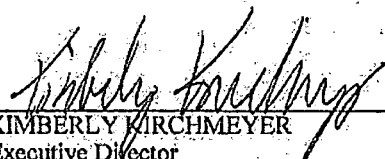
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4. Taking such other and further action as deemed necessary and proper.

DATED: December 19, 2017


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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